

Lamoine Board of Appeals
DRAFT Minutes – Meeting 28 March 2017

Recognizing that a quorum is present, Chair Fenton **called the meeting to order** at 6:59 PM.

Present were Appeals Board members Hancock “Griff” Fenton, Michael Jordan, and Jon VanAmringe.

Minutes from Prior Meeting [14 February 2017]. By unanimous consent agreed that memorandum dated 1 February 2017, from Rev. John Holt, Chair, Lamoine Planning Board, be included in the record. Mr. Jordan moved to approve the Minutes as presented. Mr. VanAmringe 2nd. Vote in favor was 3-0.

1. Appeal – Mason v. Lamoine Code Enforcement Officer (denial of permit)

Prior to this meeting, the Appellants requested that further discussion of their appeal be delayed until after their return to Lamoine in early May. Board agreed. Meeting has been scheduled for 9 May.

Chairman indicated that he would contact Maine Municipal Association for guidance and precedence. After separate review and input by Board members, a memorandum was submitted to MMA on 21 April [copy below].

Board noted that there are two Maine Court Decisions that may apply to this Appeal:

- Maine Supreme Judicial Court 1998 ME 144 Decided 9 June 1998: Patricia Lewis v. Town of Rockport, et al. [suggested to Board by Kathleen Rybarz, member of Lamoine Select Board]
- Maine Supreme Judicial Court 1999 ME 81 Decided 28 May 1999: Edward Roe v. City of Portland, et al.

2. Appeals Board Ordinance – Because three other Appeals Board Members were not present it was decided that any further discussion be deferred to a future meeting when input would be available. Board did however review the ordinance in principal and general terms. Goal of the BoA Ordinance would be to:

- consolidate and standardize the appeals process in Lamoine, removing sometimes vague and inconsistent processes included in separate Ordinances
- ensure that appeal procedures comply with Maine statutes and findings of Maine courts
- outline procedures in all matters for Lamoine Appellants, including a decision flow chart
- provide a venue and hearing with fellow Lamoine residents, before seeking legal

- remedies through the courts.
- establish responsibility and authority of Appeals Board within the appeals process

In undertaking this review and drafting of a BoA Ordinance, Board will:

- review similar ordinances of other Maine municipalities
- review all Lamoine ordinances
- seek input from other Lamoine Boards
- seek guidance from MMA, and
- as needed, consult with Lamoine legal counsel

3. Other matters to come before the Board of Appeals – None

4. Next meeting date(s) – Tuesday, 9 May 2017

There being no further business, on the motion of Mr. Jordan, second by Mr. VanAmringe, all members voting in favor, the meeting was adjourned at 7:36 PM

Post Meeting Updates – Because of inclement weather, meeting of Tuesday, 14 March was rescheduled for 28 March 2017. At the request of the Appellants, any further discussion of their Appeal – Mason v. Lamoine Code Enforcement Officer (denial of permit) would be deferred until May, so that they could be present.

Respectfully submitted,

Jon VanAmringe, Secretary

To: Maine Municipal Association – Legal Department
From: Hancock Fenton, Chair, Lamoine Board of Appeals
Re: Non-conformance appeal
Date: April 21, 2017

Before our board is an appeal of a building permit denial. The permit application requested an addition to a non-conforming residence that replaced a grandfathered residence in 2003. This is not in the Shoreland Zone.

The non-conformity is the distance from the right of way. The current building and land use ordinance requires a setback from the edge of the road right of way of 50-feet, and in the absence of a known right-of-way layout, structures are to be set back at least 75-feet from

the center line of the road. In 2003 the setback standard was 75-feet from the center-line of the road.

The grandfathered structure replaced in 2003 was 58-feet from the centerline. During remodeling a porch was added which placed the setback 48-feet from the centerline. The addition requested on the current permit application that was rejected would maintain the 58-foot setback.

Here is the current section regarding non-conformance in the Lamoine Building & Land Use Ordinance (BLUO):

Non-Conforming Lots of Record:

Any non-conforming lot of record existing before March 1976 and not adjoined by other land of the same ownership may be used if it is in accordance with all other provisions of this ordinance and state law. Any non-conforming lot of record established between March 1976 and May 1999, not adjoined by other land of the same ownership but conforming to prior law at its date of purchase, may be used if in accordance with all other provisions of this ordinance and state law and if the applicant demonstrates that steps will be taken to prevent water pollution.

Non-Conforming Structure:

If any portion of a structure does not meet the dimensional requirements of the Building and Land Use Ordinance, that portion of the structure shall not be expanded by more than 30% in floor area or volume.

Our questions are:

1. The proposed addition setback would remain the same as the grandfathered structure setback (58-feet) from the center of the road. Which setback standard would apply, current or 2003, when making a determination whether a non-conforming addition could be approved?
2. Because the Code Enforcement Officer in 2003 granted a permit with a 48-foot building setback from the center of the road, does that become the new non-conforming standard for any future construction?
3. Is it possible to find that the proposed addition is not “more non-conforming” since it maintains the 58-foot setback from the center of the road of the original structure.
4. Because the non-conformance section of the BLUO only refers to expansion, are road setback requirements to be disregarded?
5. Can you cite any court or other precedent to which the Board of Appeals could refer?

Thank you for your assistance.

Griff Fenton, Chair

Lamoine Board of Appeals